

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH BAILEY,

Defendant-Appellant.

UNPUBLISHED

January 28, 2014

No. 311682

Wayne Circuit Court

LC No. 07-004306-FH

Before: SAAD, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals the trial court's order that denied his motion to correct an invalid sentence. For the reasons stated below, we dismiss the case as moot.

Pursuant to a plea agreement, defendant pleaded guilty to one count of false pretenses, MCL 750.218(4)(a), in exchange for the dismissal of 11 other counts and an agreement to pay restitution. The trial court sentenced defendant to probation in 2007. Defendant repeatedly violated probation by failing to pay restitution. Frustrated by defendant's failure to pay and uncertain of how defendant could be compelled to pay restitution if not under its jurisdiction, the trial court sentenced defendant to 3-1/2 months to 5 years in prison and made restitution a condition of parole. Defendant served his minimum sentence and was paroled last year. He was discharged from parole on January 5, 2014. Before his discharge, however, defendant challenged the trial court's sentence as unconstitutional under *Bearden v Georgia*, 461 US 660; 103 S Ct 2064; 76 L Ed 2d 221 (1983). The trial court denied the motion, finding that the sentence was valid primarily because defendant had agreed to pay restitution.

Whatever its merits, defendant's argument is moot. "As a general rule, an appellate court will not decide moot issues." *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). "An issue is deemed moot when an event occurs that renders it impossible for a reviewing court to grant relief." *Id.* This Court "will only review a moot issue if the issue is publicly significant and 'is likely to recur, yet also is likely to evade judicial review.'" *City of Warren v Detroit*, 261 Mich App 165, 166 n 1; 680 NW2d 57 (2004), lv den 471 Mich 941 (2004). This exception applies only in exceptional situations and generally only where a reasonable expectation exists that the same complaining party will again be subjected to the same illegal action. *Los Angeles v Lyons*, 461 US 95, 109; 103 S Ct 1660; 75 L Ed 2d 675 (1983).

As noted, defendant served his minimum sentence and was paroled last year. The state recently discharged him from parole. And, his situation is not exceptional. Defendant's argument against the constitutionality of his sentence is thus moot—under any standard.¹

The case is accordingly dismissed.

/s/ Henry William Saad

/s/ Mark J. Cavanagh

/s/ Kirsten Frank Kelly

¹ See *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994) (holding that sentencing issues are moot when defendant is no longer incarcerated); and *People v Harper*, 479 Mich 599, 650 n 5; 739 NW2d 523 (2007) (KELLY, J., dissenting) (arguing that sentencing issues are not moot while a defendant remains on parole because “[defendant] faces the potential of parole revocation and could be returned to prison . . .”).